

In my opinion, there had not, in contemplation of law, been a conversion of the real estate of this infant, into personal estate at the period of her death, on the 4th of October, 1852, and therefore the proceeds derived from the subsequent sale on the 12th of the same month, must go to her who occupied the relation of heir at law to the exclusion of the personal representative.

I had occasion to consider this subject very carefully in the case of *Betts et al* vs. *Wirt et al*, decided on the 24th of October, 1851, and reported in 3 *Md. Ch. Decisions*, 113, and came then to the conclusion that the mutation from real into personal estate was *not complete* until every thing had been done to effect the mutation which the Court of Appeals, in the cases referred to, said was necessary for that purpose. The cases referred to were those of *The State* vs. *Krebs*, 6 *H. & J.*, 31; *Leadenhan* vs. *Nicholson*, 1 *H. & G.*, 267, and *Hammond* vs. *Steir*, 2 *G. & J.*, 81, in which, upon great deliberation, it was held, that "the mutation of real into personal estate was complete when the sale was ratified by the court and the purchaser has complied with the terms of it by paying the money, if the sale is for cash, or by giving bonds, if the sale is on credit." And no case can be found in which it has been held or intimated that the concurrence of all these circumstances is not necessary to effect the change.

Certainly it would be very strange in the court of last resort to undertake to lay down, with precision, and, as they say, great deliberation, the rule which should govern in these cases, if they have committed the inaccuracy imputed to them in requiring a condition not at all essential to the purpose in view.

The argument pressed now is, that one of the circumstances, and that a very important one, which the Court of Appeals say is necessary to work the mutation from real to personal estate may be dispensed with; that the sale, and the confirmation of the sale by the court, are sufficient for the purpose, though the purchaser may have neglected to comply with the terms, either by paying the money or giving the bonds, though the appellate court have said, when the question was, what combination of